

Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In re Applications of
READING BROADCASTING, INC.

For Renewal of License of
Station WTVE(TV), Channel 51
Reading, Pennsylvania

and

ADAMS COMMUNICATIONS
CORPORATION

For Construction Permit for a New
Television Station to Operate on
Channel 51, Reading, Pennsylvania

) MM Docket No. 99-153

) File No. BRCT-940407KF

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To: The Commission

**REPLY OF ADAMS COMMUNICATIONS CORPORATION TO
"READING BROADCASTING, INC.'S EXCEPTIONS TO INITIAL DECISION
OF ADMINISTRATIVE LAW JUDGE RICHARD L. SIPPEL"**

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SUMMARY

Contrary to RBI's self-serving and unsupported claims, the ALJ's determinations that Adams is both qualified and the comparatively superior applicant are amply supported by the record evidence and the relevant precedent. Those determinations must be affirmed.

Similarly, the ALJ's determination that Mr. Parker is disqualified is amply supported by the record evidence and the relevant precedent, and should also be affirmed. Finally, RBI should be deemed to be disqualified.

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1. Adams Communications Corporation ("Adams") hereby submits its Reply to the Exceptions of Reading Broadcasting, Inc. ("RBI") to the Initial Decision ("ID") of Administrative Law Judge Richard L. Sippel ("ALJ") in the above-captioned proceeding. ^{1/}

A. THE ALJ'S DETERMINATION THAT ADAMS IS QUALIFIED IS AMPLY SUPPORTED BY THE RECORD AND MUST BE AFFIRMED.

2. RBI first argues that the ALJ erred in concluding that (a) Adams did not engage in any abuse of process, misrepresentation or lack of candor, and (b) Adams is therefore basically qualified to be a licensee.

3. The entirety of RBI's argument rests on RBI's view that the ALJ improperly credited Adams's testimony. RBI Exceptions ("RBI Exc.") at 2-8. RBI sifts the testimony of Adams's principals with an exceedingly fine sieve to find supposed contradictions or inconsistencies, and then claims that the ALJ erred in rejecting RBI's charge that those supposed contradictions or inconsistencies rose to the level of disqualifying misrepresentation or lack of candor. ^{2/}

4. RBI raised *all* of these claims before the ALJ in its Proposed Findings. The

^{1/} The only other party to this proceeding, the Enforcement Bureau ("Bureau"), did not file exceptions to the ID. Micheal L. Parker ("Parker") filed "Consolidated Exceptions and Brief". Parker is not a party to this proceeding other than as a principal of RBI and is not entitled to file exceptions in his own name. Both Adams and the Bureau have opposed Parker's Petition to Intervene as a Party in this proceeding. As indicated in Adams's Opposition, to the extent that Parker may at some point be allowed to participate herein, and to the extent that Parker's Exceptions may as a result be considered, Adams reserves the right to respond to Parker's Exceptions at that time.

^{2/} The substantial majority of RBI's exceptions on the Phase III issue is devoted to claims of misrepresentation and lack of candor, and *NOT* to the "abuse of process" allegation which was at issue there. RBI does devote a single paragraph to that allegation. RBI Exc. at 8. But RBI's charges of "greenmail" were fully examined on the record. Those charges are based on RBI's fanciful and self-serving notions, *NOT* on any record evidence. In order to subscribe to RBI's theory, the Commission would have to ignore uncontroverted evidence presented by Adams and considered in detail by the ALJ, including testimony the credibility of which was specifically and expressly acknowledged by the ALJ. *See, e.g.*, Adams Proposed Findings ("Adams PFC") at 194-213, Adams Reply Findings at 56-69, ID at 45-55, 74-77.

ALJ considered *all* of these claims in detail in the ID, including RBI's claims of misrepresentation and lack of candor about which no issue had been added. ID at 45-55, 74-77.^{3/} And the ALJ resolved *all* of those claims in favor of Adams. In so doing, the ALJ carefully and explicitly considered "Adams' Testimonial Veracity". ID at 77. The ALJ acknowledged some variations in some of the testimony of Adams's principals, but concluded that those variations were the sort of "errors and inconsistencies" which are "not unusual in cases of this magnitude and complexity". ID at 77, quoting *ABC-ITT Merger Case*, 9 FCC2d 289, 324 (1967). In sum, the ALJ explicitly and expressly found Adams's witnesses to be credible:

The testimony of Adams principals, while not crisp, clear and concise in all respects, has not misrepresented any material facts, has not misstated any facts of decisional significance, has not distorted the record, has not been misleading, and has not been lacking in candor.

ID at 77.

5. The ALJ was clearly correct in his assessment of Adams's qualifications. It is

^{3/} For example, RBI wastes considerable energy alleging that Adams somehow "changed its position" about the motivation for filing its application. RBI Exc. at 2-3. According to RBI, this supposed revision rose to the level of disqualifying misrepresentation. But the record clearly establishes that Adams consistently explained that it was motivated by the belief that television stations which broadcast full-time home shopping (such as WTVE) were not serving the public interest and would, therefore, be subject to successful renewal challenge. See, e.g., Adams PFC at 195-196. Adams's application thus had two complementary and salutary purposes. First, Adams hoped to advance the public interest by highlighting the inadequacy of home shopping programming. Second, Adams hoped to advance its own private interest by obtaining, largely because of that inadequacy, a full-service television license at a bargain basement price. Adams's goal was consistently stated, and it was absolutely and unquestionably consistent with the intended purpose of the comparative renewal process. E.g., *Comparative Renewal Process*, 4 FCC Rcd 4780, 4781 (¶11) (1989) (identifying "the intended goals" of the comparative renewal process as "obtaining a license or identifying deficiencies of incumbent licensees"); *Pueblo Broadcasting Corp.*, 57 RR2d 1053, 1059-1060 (Rev. Bd. 1985); *Formulation of Policies Relating to the Broadcast Renewal Applicant Stemming from the Comparative Hearing Process*, 27 FCC2d 580, 583 (1971) (referring to the comparative renewal process's "critically important competitive spur"); *NBMC v. FCC*, 589 F.2d 578, 579 (D.C. Cir. 1978). Plainly, the ALJ correctly recognized that Adams had not engaged in misrepresentation.

well-established that "insignificant misstatements do not warrant . . . the 'blunderbuss of disqualification.'" *Fox River Broadcasting, Inc.*, 88 FCC2d 1132, 50 R.R.2d 1321, 1326-27, n. 15 (Rev. Bd. 1982), citing *WADECO, Inc. v. FCC*, 628 F.2d 122, 133 (D.C. Cir. 1980). This is especially so when the allegations of misconduct are based on one party's self-serving and not-necessarily-accurate interpretation of an opposing party's factual assertions during the course of an adversary proceeding.^{4/}

6. RBI's challenge to Adams's qualifications in its exceptions requires that the Commission completely ignore the ALJ's determination of the credibility of Adams's testimony. But such express and explicit credibility determinations of a trier of fact, based on a "careful analysis" (ID at 77) of the witnesses' testimony, are entitled to special deference and cannot be rejected absent some irreconcilable conflict with other record evidence. *See, e.g., Opal Chadwell*, 2 FCC Rcd 5502, 5504 (Rev. Bd. 1987), quoting *WEBR, Inc. v. FCC*, 420 F.2d 158, 162 (D.C. Cir. 1969); *Signal Ministries, Inc.*, 104 FCC2d 1481, 1486 (Rev. Bd. 1986). The ALJ had the opportunity to observe Adams's witnesses, and he expressly found them to be credible. No basis exists for reversing either that finding or the ultimate conclusion that Adams is qualified, a conclusion which is solidly based on that finding.

^{4/} *E.g., Adell Broadcasting Corp.*, 57 R.R.2d 307, 310 (Rev. Bd. 1984) (citing the ALJ's initial decision in that case for the proposition that "[g]iven the ingenuity of counsel and the zeal with which they urge their causes, it will be the rare case in which the witness testimony cannot be subjected to attack (whether frivolous in fact) at the conclusion of the case on grounds that the witness lied or was less than forthcoming in his testimony.").

B. THE ALJ'S DETERMINATION THAT PARKER IS NOT QUALIFIED IS AMPLY SUPPORTED BY THE RECORD AND MUST BE AFFIRMED.

7. RBI next argues that the ALJ erred in concluding that Parker engaged in misrepresentation and lack of candor and is therefore disqualified. RBI Exc. at 9-14. But the ALJ's findings and conclusions in this regard were fully supported by the facts and the law, and were clearly correct.

8. In its *Policy Regarding Character Qualifications in Broadcast Licensing*, 102 FCC2d 1179, 59 RR2d 801 (1986), the Commission recognized that misrepresentation or lack of candor before any governmental agency could reflect on the applicant's ability to be truthful and forthcoming before the Commission. *Id.* at ¶¶35-36. But the Commission reserved for special consideration instances of misrepresentation or lack of candor before the Commission itself. *Id.* at ¶¶53-61. While the Commission was clearly interested in learning of instances of dishonesty by its applicants in other fora, it was most interested in knowing about such instances in the Commission's own proceedings. *Id.*

9. RBI's legal arguments nonsensically turn the Commission's policy on its head. Paradoxically, its factual arguments lay bare RBI's fundamental dishonesty and lack of candor.

10. First, Parker was found to have engaged in "fraud" or "deceit" *before the Commission* on at least two occasions. *See Religious Broadcasting Network*, 3 FCC Rcd 4085 (Rev. Bd. 1988); *Mt. Baker Broadcasting Co., Inc.*, 3 FCC Rcd 4777 (1988). This is *precisely* the type of misconduct which the Commission held to be most probative of an applicant's likely future conduct before the Commission. *Character Qualifications*, *supra*, at ¶¶54-57. It is the type of conduct about which an applicant is expected to be maximally

forthcoming.

11. In keeping with the Commission's overriding interest in this area, Question 4 of the application forms which Parker executed in 1989-1992 call for "full disclosure" of *any* adverse finding, adverse final action or consent decree "by *any* . . . administrative body . . . in *any* civil . . . proceeding brought under the provisions of *any* law related to . . . fraud." *E.g.*, Adams Exh. 51, p. 9; Adams Exh. 52, p.7; Adams Exh. 53, p. 4; Adams Exh. 54, p. 7 (emphases added).

12. According to RBI, however, Parker was not required even to mention the earlier determinations concerning his fraudulent misconduct. RBI Exc. at 9-11. This is an incredible argument not only in view of the Commission's general requirements concerning disclosure of past fraudulent behavior, but also in view of the specific, unequivocal, all-encompassing language of Question 4 itself. That question does *not* include any exception for Commission proceedings; to the contrary, it seeks information about *any* proceeding before *any* administrative body.

13. RBI argues that fraud before the Commission need not have been disclosed in response to Question 4 because Question 7 was really the place where such disclosure was required. RBI Exc. at 9-10. But then RBI claims that Parker was not required to disclose his history of fraud in response to Question 7 because Question 7 does not ask for such information. RBI Exc. at 9, n. 27. This claim is multiply flawed.

14. First, the distinction which RBI attempts to draw between the respective scopes of Question 4 and Question 7 would mean that the Commission is concerned *less* about fraud before the Commission itself than about fraud before some other agency, since (according to RBI) less disclosure rather than more was required concerning Parker's history

of misconduct before the Commission. RBI Exc. at 9-10. But *Character Qualifications* makes abundantly clear that precisely the opposite is true: while the Commission is definitely concerned about fraud before other agencies, it is more acutely concerned about fraud in its own proceedings.

15. Second, RBI claims that Parker fully responded to Question 7 and, in fact, provided more information than was required. RBI Exc. at 10-11. But that argument is belied by the fact that, in his applications, Parker provided information which, at least by RBI's narrow view, was not required (*e.g.*, a statement suggesting that the *Religious Broadcasting* proceeding involved only comparative considerations). If Parker really believed that he was required to disclose only "name/rank/serial number" relative to his dismissed or denied applications, he would have so limited his responses. By adding as a flourish the suggestion that *Religious Broadcasting* involved only comparative considerations, Parker obviously sought to misdirect the Commission's staff.

16. Third, while RBI now claims that Parker responded "no" to Question 4 because that question does not relate to Commission proceedings, RBI Exc. at 9, that claim is contradicted by Parker's testimony. Asked why he had responded "no" to Question 4, Parker testified that he did not believe that he had been found to have engaged in any fraudulent conduct. *E.g.*, Tr. 1944-1946. ^{5/} That notion, of course, is risible in view of

^{5/} In fact, Parker repeatedly claimed that the charges of fraud were really directed against the sham applicant in *Religious Broadcasting*, and not against him. *E.g.*, Tr. 1964, 1967, 1969, 2008, 2085, 2636. He based that claim on the notion that, in *Religious Broadcasting*, the Commission was concerned about his role as an undisclosed real-party-in-interest, and according to Parker it was the applicant, not Parker, which failed to disclose his role. But the record in *Religious Broadcasting* establishes that it was **PARKER**, not the applicant, who prepared the application. *E.g.*, 2 FCC Rcd at 6567 (¶57); 3 FCC Rcd at 4090 (¶16). Confronted with this truth, Parker initially attempted to avoid a direct answer, *e.g.*, Tr. 2008-2009 ("your interpretation is one way; mine's another"), before finally, grudgingly, acknowledging that he himself prepared the application, Tr. 2011-2012.

the intensely damning language of both *Mt. Baker* and *Religious Broadcasting*. RBI's attempt to craft a *post hoc* justification for Parker's failure to disclose his history cannot be credited in light of Parker's own testimony which puts the lie to RBI's fanciful justification.

17. Parker further demonstrated his willingness and ability to engage in misrepresentation and lack of candor before the Commission in October, 1992, in connection with his application to acquire the license of International Broadcast Station KCBI (since changed to KAIJ), Dallas, Texas. RBI's Exceptions demonstrate that RBI shares that same willingness and ability.

18. In October, 1992, a Commission staffmember processing Parker's KCBI application inquired of Parker whether any basic qualifying issues had been sought and/or added in any of the proceedings listed in his application, including the *Religious Broadcasting* case. *See, e.g.*, Adams PFC at 136-140. The obvious answer to that inquiry was "yes", since a disqualifying issue *had* been requested, *and* added, *and* resolved adversely to Parker there.

19. And yet, in his amendment in response to the staff's inquiry, Parker explicitly stated that "no character issues had been added or requested" in, *inter alia*, *Religious Broadcasting*. Adams Exh. 55, p. 3. That was unquestionably false.

20. In its Exceptions RBI ascribes the false amendment to Eric Kravetz, a communications attorney retained by Parker to assist in responding to the staff's inquiry. RBI Exc. at 12. According to RBI, "Kravetz had previously represented Parker" in connection with an application involving a Norwell, Massachusetts television station. *Id.* But Mr. Kravetz specifically denied any prior representation of Parker, Tr. 2345-2346, and Parker himself acknowledged that he had not been represented by Mr. Kravetz prior to the

Dallas amendment, Tr. 1978-1979. RBI's attempt to lay the blame for the Dallas amendment onto Mr. Kravetz is flatly inconsistent with the record.

21. RBI's secondary attempt to legitimize Parker's Dallas amendment by reference to "advice of counsel" from R. Clark Wadlow of Sidley & Austin runs similarly afoul of the factual record. While RBI implies that Parker enjoyed the comfort of specific advice from Mr. Wadlow directly on point, *see* RBI Exc. at 12, the fact is that Mr. Wadlow had *not* provided such specific advice. To the contrary, Mr. Wadlow had merely provided a single letter which, while extremely limited in its scope, was nonetheless *in*accurate even within that narrowed scope. *See* Adams PFC at 161-168. Moreover, within a week of the issuance of that letter in February, 1991, Parker and Mr. Wadlow had substantial reason to recognize that the Commission would have serious continuing concerns about Parker's misconduct in *Religious Broadcasting*. *See* Adams PFC at 168-175. Parker could not legitimately rely on Mr. Wadlow's advice in 1992, and RBI cannot now rely on that advice as a cure-all for Parker's misconduct.

22. RBI also asserts that Parker did not contradict himself in his testimony about the Dallas amendment. RBI Exc. at 13. RBI's assertion is demonstrably wrong. In his written testimony, Parker stated that, "[b]ased on [Mr. Wadlow's] previous advice", "I indicated that there were no unresolved character issues pending when [the *Religious Broadcasting* application was] dismissed." RBI Exh. 46 at 8. That, of course, is *NOT* what Parker said in the Dallas amendment -- to the contrary, he said that no qualifying issues had been sought or added, a flat-out falsehood. ^{6/}

^{6/} Nor can Parker look to Mr. Wadlow to justify Parker's misrepresentative Dallas amendment. Mr. Wadlow specifically denied ever having advised Parker that no disqualifying issues had been

23. Confronted on the witness stand with this reality, Parker claimed initially that the Dallas amendment was not intended to refer to the *Religious Broadcasting* proceeding. Tr. 1986-1987. However, he later moved away from that obviously bogus claim and offered up yet a third "explanation" for the Dallas amendment, *i.e.*, that while there *had* been a disqualifying issue, that issue had been resolved favorably to Parker in *Religious Broadcasting*. Tr. 2027-2028, 2064-2067, 2070. It is impossible to suggest with a straight face that Parker did not contradict himself. ^{2/}

24. Parker was found to have engaged in fraud or deceit on the Commission in two separate proceedings in 1988. He never bothered to mention the true scope of those adverse rulings in multiple subsequent applications, and he affirmatively lied in the Dallas amendment when the staff requested clarification of his elliptical disclosures. Finally called to account in the instant proceeding, Parker did not acknowledge his untruths or offer any credible explanation for them. Instead, he did what he has consistently done in the past: he dissembled and sought to blame anybody but himself. In its Exceptions, RBI has carried on

^{6/}(...continued)

sought or added in *Religious Broadcasting*. According to Mr. Wadlow, "I can't believe I would have" so advised Parker "because I'm aware that one [disqualifying issue] was [sought and added]." Tr. 1813. In other words, Parker could not under any circumstance claim that Mr. Wadlow had ever supported the specific concept reflected in Parker's language in the Dallas amendment.

^{2/} RBI also claims that Parker should not be faulted for not disclosing *Religious Broadcasting* in two applications filed in 1989, less than a year after the Review Board's blistering decision against Parker. RBI Exc. at 13. According to RBI, non-disclosure was appropriate because *Religious Broadcasting* was not then final. But in those two 1989 applications, Parker *did* disclose the Commission's *Mt. Baker* decision, in each case noting that a petition for reconsideration of that decision was pending. Adams Exh. 49, p. 11, Adams Exh. 50, p. 27. Parker's reference to the then-pending petition for reconsideration in *Mt. Baker* establishes conclusively that Parker was aware then that the *Mt. Baker* decision was not final -- and yet he reported that decision in his 1989 applications. Finality *vel non* thus appears *not* to have been a concern to Parker, and RBI's attempt to justify Parker's 1989 non-disclosures of *Religious Broadcasting* on the basis of non-finality is contradicted by the record evidence.

that unfortunate tradition.

25. The conduct of Parker and RBI is akin to that of the applicants in *Schoenbohm v. FCC*, 204 F.3d 243 (D.C. Cir. 2000), and *Contemporary Media, Inc. v. FCC*, 214 F.3d 187 (D.C. Cir. 2000).

26. In *Schoenbohm*, a licensee had been convicted of a crime, and was designated for hearing to determine the effect of that conviction on his qualifications to remain a licensee. During the hearing, the licensee declined to acknowledge the precise nature of his misconduct, and instead sought to minimize the significance of that misconduct in a misleading manner. The Commission concluded that that effort constituted disqualifying misrepresentation in and of itself, and the Court affirmed. According to the Commission,

[the licensee] was permitted to explain *truthfully* the nature and circumstances of his conviction, but not to give the false impression that it was based on something other than the performance of specific acts by him . . .

Herbert L. Schoenbohm, 13 FCC Rcd 15028, 15034 (1998) (emphasis in original). That is precisely the same opportunity which was given to Parker and RBI here, and they have responded as did Schoenbohm.

27. In *Contemporary Media*, the dominant shareholder of a corporate licensee had been criminally convicted, and the licensee had advised the Commission that that shareholder had been removed from involvement in the licensee's day-to-day operations. That status later changed, but the licensee did not so advise the Commission fully and forthrightly. Instead, it offered a Parker-like notification which hid the truth under a deceptive veneer of apparent disclosure. In the Court's words,

Only a side-by-side, line-by-line comparison of the two filings -- conducted with some skepticism of the licensees' candor -- would have detected the subtle difference in language upon which the licensees now rely. In 1992, however, the FCC had no

reason to conduct such a forensic comparison of the two representations.

214 F.3d at 197. This, too, is how Parker has proceeded -- he acknowledged that the Dallas amendment, for example, "may be cutting fine hairs", Tr. 1987-1988. And in its arguments concerning Parker, RBI has also chosen to shade the truth in defense of the indefensible.

28. The totality of the record clearly establishes that the Commission can have no confidence in the honesty or candor of either Parker or RBI, and they should be disqualified. The ALJ's conclusion that Parker is disqualified is correct and must be affirmed. As Adams has previously argued, the ALJ's failure also to disqualify RBI should be reversed. ^{8/}

C. ALJ CORRECTLY REFUSED TO AWARD ANY RENEWAL EXPECTANCY TO RBI.

29. According to RBI, "*EVERY* element" of the ALJ's renewal expectancy analysis was erroneous. RBI Exc. at 14 (emphasis added). The Commission can and should be skeptical of an appeal which posits the incorrectness of the entirety of the trial court's analysis.

^{8/} On May 21, 2001 -- the deadline for exceptions herein -- RBI filed a "Section 1.65 Statement" advising the Commission that, supposedly as of May 18, 2001, Parker had resigned his corporate positions and transferred his ownership interests in RBI. However, as Adams has argued in its Opposition to Parker's Petition to Intervene herein, notwithstanding these supposed developments, Parker clearly remains on the scene with a direct interest in RBI as beneficial owner of the largest single bloc of RBI stock. Moreover, RBI remains largely a Parker-designed operation, with the majority of directors nominated by Parker or having obvious ties to him. The later-than-last-minute "departure" of Parker must be seen as a wholly disingenuous and ineffective attempt by Parker and RBI to deflect the adverse effect of Parker's misconduct.

And as noted in the text above, RBI's Exceptions are infused throughout with the type of misleading inaccuracy and lack of candor which are the hallmarks of Parker's conduct before the Commission. RBI's Exceptions (not to mention its disingenuous effort to create the misimpression that Parker has really left the company) provide strong further support to Adams's position that RBI must be disqualified.

(1) *Ascertainment*

30. RBI first challenges the ALJ's critical view of RBI's lame and ineffective ascertainment efforts. RBI Exc. at 14-15. RBI conclusorily asserts that RBI did undertake "several forms of ascertainment" and "developed responsive programming based on these ascertainment efforts." *Id.*

31. But RBI chose *NOT* to present *ANY* issue-oriented program-length programming for the majority of the license term. *See, e.g.,* Adams PFC at 32-41; Tr. 848-849. Instead, RBI simply presented PSA's. And when, at the end of the license term, RBI did present some limited public affairs programs, those programs were not produced by the station and were not responsive to any particular needs or interests ascertained by the station. In fact, there is no evidence that the station even knew the subject of the programs it broadcast before it broadcast them!

32. While RBI may have engaged in some activities vaguely resembling "ascertainment", those activities were at most a charade, an attempt by RBI to create the inaccurate impression that RBI had any interest in providing programming responsive to the needs and interests of its service area. ^{9/}

^{9/} The purely cosmetic nature of RBI's ascertainment is graphically illustrated in the record. In 1993, RBI had submitted materials to the Commission which, RBI stated, "reflect[ed] [the station's] commitment to serve the public in its community of license and service area." Adams Exh. 16, p. 1. Those materials included a one-page document entitled "Community Ascertainment" describing the station's "Community Ascertainment efforts for the period October 1-December 1, 1992". Adams Exh. 17, p. 271. According to that description, those efforts consisted of five conversations which Parker had supposedly had with five separate individuals, three of whom were directors of RBI -- although the fact that the interviewees were associated *at all* with RBI was *not* disclosed to the Commission. *Id.* So the ascertainment efforts which RBI chose to strut before the Commission in fact consisted mainly of RBI officials talking to one another. Most importantly, Parker was unable to point to *ANY* programming (other than a few PSA's) which might have been responsive in any way to the needs and interests identified in RBI's "Community Ascertainment" description. Tr. 832-847. Thus, RBI's "ascertainment efforts" were nothing more than window-dressing.

(2) *Programming*

33. RBI claims that it should have been given more credit for its programming performance. RBI Exc. at 15-18. It is difficult to take that claim seriously.

34. As discussed in Adams's Brief in Support, the ALJ already gave RBI far more credit than it deserved for its programming. The ALJ appears to have treated, incorrectly, PSA's as "programs". ID at 18-20. But the evidence (including RBI's own station logs and related materials prepared at the time of broadcast) conclusively established that: (a) RBI broadcast no locally-oriented nonentertainment programs for the first four years of the license term, *e.g.*, Adams PFC at 32-69; and (b) when RBI did broadcast some public affairs programs provided to the station for free by state legislators, RBI apparently did not know the subjects discussed in those programs and did not broadcast them on any established schedule which might permit interested viewers to watch them regularly, *e.g.*, *id.* at 46-50.

35. Throughout the license term RBI's nonentertainment programming consisted almost exclusively of public service announcements ("PSA's"), so denominated *by RBI* in its own logs and affidavits of broadcast. The Commission has unequivocally stated that PSA's "should not be a broadcaster's primary method for responding to community needs". *Airing of Public Service Announcements by Broadcast Licensees*, 81 FCC2d 346, 369, 48 RR2d 563, 581 (1980). RBI chose to ignore that crystal-clear admonition. ^{10/}

36. In its discussion of programming RBI refers repeatedly to financial considerations, as if to justify its inadequate program performance by pleas of poverty. RBI

^{10/} This total reliance on PSA's was a conscious choice by RBI. *See, e.g.*, Tr. 849-850. While RBI claims that it "showed that the home shopping audience was more receptive to short-form public service programming", RBI Exc. at 16, that "showing" was completely unsupported and self-serving, *id.*

Exc. at 15-17. But there is no evidence suggesting that the station's financial situation imposed limitations on its programming. ^{11/} To the contrary, evidence was proffered showing that, despite its protestations of poverty, RBI paid Parker more than \$500,000 during the license term, including more than \$325,000 during the last three years when RBI claimed still to be operating at a loss. *See* Adams PFC at 114-120.

37. RBI's financial claims ignore the fact that the extremely limited nonentertainment programs the station finally did air at the end of the license term -- *i.e.*, programs produced by state legislators and made available to any station willing to broadcast them -- did not cost anything and had been available for years. *See* Tr. 1696; RBI Exh. 33, p. 9. That is, RBI could have been broadcasting such programs throughout the license term at no cost; had RBI really wanted to try to serve the public through such programs, financial considerations would have had no effect at all.

38. RBI suggests that it provided, *inter alia*, "short-form news programming". RBI Exc. at 16. That's plainly wrong. RBI did not broadcast any news at all. In the most obvious example, *when the worst earthquake in Pennsylvania's history struck Reading in January 1994, the station did not even broadcast emergency announcements, much less news reports concerning the earthquake and its aftermath.* It is stunning that RBI suggests that it provided "news" in any form.

39. RBI also claims that its home shopping format had been endorsed by the Commission. RBI Exc. at 16, citing *Home Shopping Report and Order*, 8 FCC Rcd 5321, 5327 (1993). In fact, the Commission held merely that home shopping was not necessarily

^{11/} The ALJ specifically invited such evidence. *Memorandum Opinion and Order*, FCC 99M-47, released August 9, 1999 at 6. RBI chose not to avail itself of the opportunity provided by the ALJ.

contrary to the public interest. That determination was based on the representation that the home shopping format would still give broadcasters adequate opportunity to provide nonentertainment public interest programming directed to local needs and interests.

Illustrating what such programming could entail, the Commission cited a showing that a prominent home shopping broadcaster aired, in addition to hourly 4.5 minute features entitled "In Your Interest" or "IYI", "four hours each Sunday of non-IYI nonentertainment programming." 8 FCC Rcd at 5327 (¶29). That far exceeds, quantitatively, any such programming broadcast by RBI. And qualitatively, the additional programming referred to by the Commission specifically included coverage of the Gulf War and live election coverage, two areas in which RBI's programming was completely lacking.

(3) *Community Reputation*

40. RBI quarrels with the ALJ's assessment of the community witnesses presented at trial. RBI Exc. at 17-18, citing ID at ¶¶ 198, 201. But the ALJ accurately and fairly assessed the testimony of the community witnesses. *See, e.g.*, Adams PFC at 69-94.

41. RBI seems not to grasp the primary purpose of community witnesses. Such witnesses are presented in order to demonstrate the public's perception of the station's performance, to describe its reputation in the community, and particularly to demonstrate whether the station is perceived to have provided exemplary service. *E.g.*, *Metroplex Communications, Inc.*, 4 FCC Rcd 8149, 8152-8153 (Rev. Bd. 1989).

42. While some of RBI's witnesses did express gratitude for the fact that RBI had broadcast PSA's on behalf of the witnesses' organizations, *NONE* of the public witnesses offered even the slightest indication of the station's reputation in the community. None gave any indication that RBI's programming service was in any way exemplary or distinct from

other services provided by other local media. Indeed, none of RBI's witnesses was even a regular viewer of the station. ^{12/}

43. RBI also claims that Adams's community witnesses "lacked personal knowledge of RBI's public service record". RBI Exc. at 18, n. 47. But Adams's witnesses reflected substantial segments of the Reading community. ^{13/} If RBI could legitimately lay claim to any meritorious "public service record", these four witnesses were clearly in a position to be aware of that record. Thus, RBI's observation that RBI's four witnesses "generally lacked personal knowledge of RBI's public service record" is not helpful to RBI.

(4) *Compliance with FCC regulations*

44. RBI claims that no unauthorized transfer of control (*de facto* or *de jure*) occurred. RBI Exc. at 18-19. RBI is wrong. The evidentiary record conclusively establishes that such an unauthorized transfer was in fact successfully orchestrated by Parker in October, 1991. *E.g.*, ID at 10-13; Adams PFC at 99-114; Bureau Proposed Findings

^{12/} RBI argues that it is irrelevant whether any of its community witnesses were regular viewers of Station WTVE(TV). RBI Exc. at 17-18. That is an argument made by a licensee which had no regular viewers during the license term. RBI presented community witnesses who were largely unfamiliar with the station's programming. How could such witnesses testify knowledgeably about the station's reputation in the community? The ALJ did give the testimony of these witnesses as much credit as possible, *see* ID at 60. The simple fact is that that testimony was not entitled to any decisionally significant credit at all.

^{13/} Two of Adams's witnesses were persons who have long held elected positions in Reading and who have been involved in Reading public life for years. Adams Exhs. 45, 46. Another was involved in the original construction and operation of Station WTVE(TV) and has remained actively involved in local media coverage of Reading affairs for almost two decades. Adams Exh. 48. And a fourth is the Emergency Management Coordinator for Berks County, whose responsibilities include coordination of responses and recovery in emergency and disaster situations. Adams Exh. 44. This last individual is in regular contact with local broadcast stations in the Reading area and was thus in a position to evaluate the relative involvement of local broadcasters in emergency- or disaster-related community service.

at 49-53, 78-79. ^{14/}

45. Presumably recognizing the futility of denying that an unauthorized transfer occurred, RBI claims that it would be "regulatory overkill" to impose the "death penalty" for such an unauthorized transfer. RBI Exc. at 19. But RBI was not denied renewal solely because of the unauthorized transfer. Rather, the unauthorized transfer was but one of a myriad factors consistently pointing to the conclusion that the Commission cannot rely on RBI to comply with the Commission's rules.

46. Other similar factors included RBI's failure to report its Management Services Agreement ("MSA") and its failure to report accurately its officers and directors. *See* ID at 62-63.

47. As to the MSA, RBI's chameleon-like story continues to change. The MSA was entered into in 1989. RBI was clearly required to report its existence and submit a copy to the Commission. RBI failed to do so until 1997. In its Proposed Findings, RBI claimed that the MSA "was reported in an amendment filed" in February, 1992, but that no copy had been submitted because the rules were ambiguous. RBI Proposed Findings at 96-98. However, there was no ambiguity at all in the rules. Adams Reply Findings at 21-26. Moreover, the February, 1992 "report" concerning the MSA consisted of nothing more than a passing reference to a "contract of employment" (*not* a "management services agreement") on the next-to-last page of an attachment to an amendment. *See* Adams Exh. 30, p. 8.

48. RBI now claims to recognize that the February, 1992 reference to the MSA

^{14/} Parker himself has acknowledged his control of RBI. As noted, Parker has sought to intervene individually herein, based on the claim that, on May 18, 2001, he resigned certain official positions and transferred certain ownership interests in RBI. In his Petition to Intervene, he describes RBI as "an entity over which [Parker] now has no control." Parker Petition to Intervene at 6. The obvious implication of Parker's language is that, prior to May 18, 2001, Parker *DID* have control over RBI.

was *not* really a report. RBI Exc. at 20, n. 54. ^{15/} RBI also abandons the discredited notion that there was any ambiguity about whether filing of the MSA was required; now its story is that it thought that the MSA *had* been filed. RBI Exc. at 19-20.

49. With respect to the inaccurate reporting of stock ownership, officers and directors, RBI failed for a period of several years to advise the Commission of the identities of RBI's officers and directors elected following Parker's corporate coup in October, 1991. RBI also failed to advise the Commission of Parker's October, 1991 issuance of stock (which effected a transfer of control) until late 1999. RBI does not deny these violations, but it argues that RBI had no motive to intentionally conceal this information.

50. Adams begs to differ. In October, 1991, Parker grabbed control of RBI without prior Commission approval. In so doing, he caused the original board of directors to be vacated, and he nominated and caused to be elected his own slate of directors. Those Parker-named directors then elected new officers. These elections occurred on October 30, 1991, amid substantial intra-corporate conflict. *E.g.*, Adams Exh. 13, pp. 38-73.

51. Just two weeks later, RBI filed a long-form FCC Form 315 ostensibly seeking approval of transactions designed to get RBI out of bankruptcy. That application contained no reference at all to Parker's issuance of stock two weeks earlier -- even though the stock distribution ostensibly proposed in the application was in fact the stock distribution which

^{15/} Compare RBI Proposed Findings at 97 (where RBI claimed that the MSA "was reported in an amendment" filed in February, 1992) with RBI Exc. at 20, n. 54 (where it now says that "RBI recognizes that including a reference to the agreement in an amendment . . . does not satisfy RBI's reporting obligations. . .").

had already occurred. ^{16/}

52. That application required identification of the current and proposed officers and directors. Technically, the then-"current" officers and directors were those who had been elected in October, 1991, but they had been elected by shareholders whose ownership was only proposed in the November, 1991 application. To admit that still-to-be-approved shareholders had already elected officers and directors would have tipped the Commission off to the fact that those still-to-be-approved shareholders had *already* acquired their stock -- which would have led to disclosure of Parker's unauthorized corporate take-over. *Since Parker had been held to have engaged in fraud and deceit before the Commission only three years earlier, such a disclosure could have had serious adverse effects for RBI and Parker.* ^{17/}

53. Indeed, such a disclosure could have made apparent then that which is obvious

^{16/} As recently as July, 1999, RBI was *STILL* expressly denying to the ALJ that Parker had acquired any stock in October, 1991. See Adams PFC at 102-103. RBI changed its tune only after Adams managed to review, after considerable delay and over RBI's strenuous objections, RBI's corporate records during the discovery phase of this case.

In its Exceptions, RBI suggests that RBI did disclose Parker's October, 1991 stock issuance in the November, 1991 Form 315 transfer application. RBI Exc. at 20, n. 55. That suggestion is breathtaking in its lack of candor. The "contrary indication" referred to by RBI consisted of a notation included in the table of *proposed* shareholders. See Adams Exh. 52 at 11. Nothing in that notation could have been interpreted as applying to shares which had already been issued, and the Commission had no reason to guess from that notation that the transactions proposed in the application had already been consummated.

^{17/} The threat to RBI and Parker was made dramatically evident in *Two If By Sea Broadcasting Corporation*, 12 FCC Rcd 2255, 2257 (1997). Prior to that decision, the Commission had not had occasion to act on any Parker-related applications in which the full depth and breadth of Parker's misconduct had been fully and candidly disclosed. In *Two If By Sea*, a petitioner had brought that misconduct to the Commission's attention. In response, the Commission declined to grant Parker the relief he was seeking there. Instead, the Commission held that "[s]erious character questions remain" regarding Parker. *Id.* Parker thus had good reason to try to cloak his further misconduct from the Commission's view for as long as possible.

beyond dispute now: Parker's *modus operandi* is one of misinformation and non-disclosure through which he avoids repercussions from misconduct by concealing that misconduct.

Strongly condemned by the Commission twice in 1988, by mid-1989 Parker had nonetheless insinuated himself into RBI. When his relationship with RBI's other principals appeared to be permanently souring in the Fall, 1991, Parker simply staged a coup and took over -- but again, he didn't bother to mention those circumstances to the Commission, he didn't remind the Commission about the earlier findings of misconduct, and he gave the Commission no clue that anything was amiss in Reading. He then continued that pattern of non-disclosure through his applications in 1991-1992, and even into the hearing in this case.

54. The ALJ correctly assessed the hidden motives at work behind RBI's failures to disclose accurate information to the Commission. ID at 61-63. The new explanations *du jour* for those failures presented in RBI's Exceptions do not undermine the ALJ's findings and conclusions.

D. THE ALJ CORRECTLY FOUND ADAMS TO BE COMPARATIVELY SUPERIOR.

55. In a two-page series of conclusory statements, RBI claims that the ALJ erred in holding that Adams is comparatively superior to RBI. RBI Exception at 22-23. RBI claims that it was entitled to credit for superior coverage and for the local residence, civic activities and broadcast experience of some of its principals. RBI also asserts that RBI should not suffer any comparative demerit because it holds multiple attributable media interests while Adams holds none. RBI's summary arguments are without merit.

56. Contrary to RBI's claim, the record evidence establishes that Adams's proposed coverage is substantially superior to RBI's. *E.g.*, ID at 6-7, 65. RBI would have

the Commission give it credit for coverage from facilities specified in a construction permit which RBI held for the better part of a decade *without constructing*, and which RBI has effectively abandoned within the last month. RBI Exc. at 22. RBI thus cannot claim any comparative preference on the basis thereof. And since there is no record evidence concerning the coverage which might be achieved from its recent revised proposal, that proposal, too, is irrelevant and immaterial to the comparative issue. As discussed in Adams PFC (at 9-13, 224) and Brief in Support of Initial Decision (at 4-5), Adams is entitled to comparative preference for its superior coverage proposal. ^{18/}

57. RBI claims that it should have been given more comparative credit for local residence, civic activities and broadcast experience because, according to RBI, the ALJ imposed an improper cut-off date with respect to those factors. RBI Exc. at 22. Even if this argument were meritorious, which it is not, it would be immaterial.

58. As discussed in Adams's Proposed Findings and Brief in Support, the ALJ

^{18/} In its Brief in Support, Adams advised the Commission of a decision of the Commonwealth Court in Pennsylvania concerning the non-availability of the transmitter site specified in RBI's now-abandoned construction permit. Adams stated that RBI had not notified the Commission of that decision. Adams Brief at 5, 10. Adams has since learned that RBI *did* notify the Commission of that decision in a "Section 1.65 Statement" filed with the Commission on April 30, 2001. Adams regrets its earlier misinformation, but the fault is not Adams's, since Adams did not receive a copy of RBI's Section 1.65 Statement and only learned of it through a reference thereto in RBI's Exceptions.

While the Certificate of Service appended to RBI's Section 1.65 Statement reflects service on undersigned counsel, by hand, on April 30, 2001, no such service was effectuated for reasons unknown to Adams. This is not the first, or even most recent, instance in which certificates of service appended to RBI submissions have proven to be inaccurate. For example, RBI filed a Motion for Extension of Time on April 24, 2001, showing hand service on Adams's counsel. But no copy of that pleading was received from RBI by undersigned counsel (we ultimately obtained a copy from the Commission's website). More recently, RBI filed a "Supplement to Section 1.65 Statement". Undersigned counsel *did* receive a hand-delivered copy of that filing, slid under counsel's door on May 23, 2001 at approximately 9:35 a.m. But the pleading was filed with the Commission on May 22, 2001, and the certificate of service states that it was hand-served on undersigned counsel on *May 21, 2001*. Clearly, RBI's certificates of service are less than completely reliable.

announced (after considering the views of the parties) that evidence concerning these factors would be relevant and material *only to the extent* that those factors could be demonstrated to have had some actual impact on or nexus with the station's historical public service programming during the license term. *Memorandum Opinion and Order*, FCC 99M-47, released August 9, 1999, at 2, ¶¶5, 6. ^{19/} But the record evidence establishes conclusively that *NONE* of RBI's principals took *ANY* steps to assure public service programming responsive to local needs and interests. *See, e.g.*, Adams PFC at 16-31, 224-226.

59. Thus, even if the ALJ did, *arguendo*, improperly limit the timeframe during which local residence, civic activities and broadcast experience might be considered, that cannot benefit RBI. ^{20/} The bottomline is that RBI did *NOT* provide responsive, locally-oriented programming, irrespective of any "local" characteristics which RBI might claim. Because of that, RBI cannot legitimately be accorded any comparative preference for "localism". To the contrary, the total absence of any positive influence on the station's programming from RBI's claimed "localism" can and should logically warrant a substantial

^{19/} This is consistent with the decision in *Bechtel v. FCC*, 10 F.3d 875 (D.C. Cir. 1993), where the integration component of the comparative analysis was held to be unlawful. Factors such as local residence, civic activities and broadcast experience were considered only in the context of the integration analysis. Thus, the elimination of integration mandated by *Bechtel* also eliminated any further automatic consideration of those particular factors. The ALJ agreed to consider those factors, but only as indicated above, *i.e.*, to the extent that those factors could be shown to have had some actual impact on or nexus with the station's historical public service programming during the license term.

^{20/} Adams does not concede any error here. A renewal applicant is not permitted to upgrade its comparative position with respect to programming-related matters after the filing of a comparative challenge. *See, e.g.*, *RKO General, Inc.*, 35 FCC2d 100, 103 (1972); *Video 44*, 6 FCC Rcd 4948 (1991); *National Black Media Coalition v. FCC*, 775 F.2d 342, 350, 356 (D.C. Cir. 1985). Since any consideration of local residence, civic activities or broadcast experience would be relevant only to programming-related matters, the cut-off for such matters is the end of the license term, *i.e.*, July 1, 1994.

comparative *DEmerit*, since the historical record establishes that RBI's principals will *not* bring those any of those supposed "qualities" to bear in programming.

60. Finally, RBI challenges any award of a diversification preference. RBI Exc. at 23. But that criterion has been expressly acknowledged and affirmed in the comparative renewal context, *see, e.g., Central Florida Enterprises, Inc. v. FCC*, 683 F.2d 503 (D.C. Cir. 1982), and RBI's conclusory, one-sentence suggestion that the criterion is improper raises no real question about the continued legitimacy of that criterion.

E. ULTIMATE CONCLUSIONS

61. In this case the Commission is presented with two applicants, each proposing to serve the public interest by broadcasting on Channel 51 in Reading, Pennsylvania.

62. Adams is fully qualified. It consists of experienced business persons and community leaders. *See, e.g.,* ID at 75; Adams PFC at 15-16. The record contains no indication that Adams would not ably serve the public interest in the operation of its proposed station.

63. By contrast, RBI has held the license to operate on that channel, and has established a track record by which its likely future performance can be predicted. That track record is a sorry one. RBI has repeatedly violated the Commission's rules. RBI has allowed itself to be controlled without prior Commission approval by an individual who had been found guilty not once, but twice, of fraud and deceit on the Commission. That individual has repeatedly engaged in further misrepresentation and lack of candor before the Commission while at the helm of RBI. Many of those instances of misconduct have occurred in filings with the Commission made on behalf of and relative to RBI. The record strongly

supports the conclusion the RBI and its central figure, Parker, cannot be relied upon to be honest, forthright and candid in their dealings with the Commission. In other words, RBI and Parker are both disqualified from being licensees.

64. But even if they are not disqualified, RBI's historical programming performance demonstrates that the public interest has not been served during RBI's stewardship of the license and will not be served if that stewardship is renewed. RBI failed to broadcast any locally-produced, locally-oriented nonentertainment programs at any time during the license term. Instead, ignoring a specific contrary admonition from the Commission, RBI consciously chose to broadcast only PSA's. At most, RBI staged a burlesque of public service performance.

65. The example which best illustrates the worthlessness of RBI's performance was its failure to react in any way to the most powerful earthquake ever in Pennsylvania, an earthquake which struck Reading full bore in January, 1994. Chronologically, this occurred at the tail end of RBI's license term, some two years after RBI had freed itself from bankruptcy and was thus on its financial feet. RBI claims that its end-of-license-term performance should be deemed more probative than its earlier performance, RBI Exc. at 15. Adams submits that the earthquake matter is indeed highly probative.

66. Reading itself was struck by a powerful earthquake. Station WTVE(TV), the only television station licensed to Reading, was on the air. But it ignored emergency notifications (from the Emergency Management Coordinator) and simply continued to broadcast home shopping programming. *See* Adams Exh. 44, pp. 20-21. It did not alert the Reading audience about the earthquake, or the need to stay off the telephone (in order to allow emergency communications), or what steps to take in the face of the earthquake and


aftershocks, or what facilities might be available to those in need as a result of the earthquake. Rather than use its broadcast license in the public interest, to assist the public in the wake of a natural emergency of unprecedented proportions in Reading, RBI continued to broadcast non-stop home shopping programming.

67. The Commission can and must insist on licensees who will be honest, forthright and candid. The record evidence in this case demonstrates that RBI does not fill that bill. The public in Reading is entitled to a television licensee dedicated to serve the viewing public in Reading. The record evidence in this case demonstrates that RBI does not fill that bill.

68. By any measure, Adams is basically qualified and comparatively superior to RBI. The ALJ correctly granted Adams's application. That decision should be affirmed.

Respectfully submitted,

/s/ 
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May 31, 2001

CERTIFICATE OF SERVICE

I hereby certify that, on this 31st day of May, 2001, I caused copies of the foregoing "Reply of Adams Communications Corporation to 'Reading Broadcasting, Inc.'s Exceptions to Initial Decision of Administrative Law Judge Richard L. Sippel'" to be hand delivered (as indicated below), addressed to the following:


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